

COMMUNICATION ACCOMPANYING  
REQUEST FOR CONTINUED EXAMINATION

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to Nomura taken with Cal Spas. The Cal Spas document referred to is presumably the three pages of Cal Spas' literature illustrating the lounge entertainment series bearing the date of October 11, 2002, which date was the date the literature was located by personnel of this firm during an Internet search for literature on products of Cal Spas.

In the final rejection, the Examiner noted that the Declaration of Mr. Valmassoi, filed with the 10/13/05 papers, was accorded no probative value because it referred to co-pending Application No. 10/671,646 and asserted that the prototype of the Master Spas design incorporated "all of the features recited in the claims of the present application", meaning Application No. 10/671,656. The Examiner also stated that if the Declaration was properly presented, it would obviate the Cal Spas reference but the issue of offer for sale would be raised.

To clarify the record, in the response to the Office Action of April 8, 2005, the Examiner was advised on page 3 that what was being submitted was a copy of a Declaration filed in Application No. 10/671,646. Applicants' attorneys offered to resubmit the Declaration made specific to the instant application when and if requested by the Examiner.

Accordingly, in order to expedite the prosecution of the RCE which is being filed with this paper, applicants submit the following:

(1) Declaration Under 37 CFR 1.131

This declaration has been executed by all inventors named in the application. This Declaration has attached to it Exhibits identified respectively as Exhibit A, B and C. Exhibit A is a copy of a brochure illustrating a spa

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incorporating the claimed features of the present invention. The brochure was first printed on or about November 5, 2000 so that it could be distributed to sales personnel of Master Spas on November 6, 2000 and to the public at a trade show in Orlando, Florida, on November 8, 2000. Also attached to the 1.131 Declaration is a copy of a technical training manual. The technical training manual bears a date of January 11, 2001 on the page labeled "1" which is the page immediately following the Table of Contents. Among the features disclosed in the brochure are housings for the television set (page 5) and the speakers (page 6). The Declaration and its accompanying Exhibits are relied on as evidence of reduction to practice of the claimed subject matter of the application at a time prior to any date that applicants are aware of for invention (either conception or reduction to practice) of the Cal Spas product shown in the brochure in the Cal Spas literature relied on by the Examiner in this case.

(2) Declaration of Terry M. Valmassoi

A second Declaration executed by Terry M. Valmassoi alone is submitted in response to the Examiner's indication that that if the Declaration (under Rule 1.131) was properly presented, it would obviate the Cal Spas reference, but the issue of the "offer for sale" would be raised. This Declaration is presented to address the issue of offer for sale. In the Declaration, in paragraph number (3), Mr. Valmassoi more particularly explains the nature of the prototype that was built, namely, that this prototype was intended to show to key dealers and sales representatives who were invited to an executive council meeting held at the Master Spas factory on June 5, 2000. As explained in paragraph (4), Mr. Valmassoi explains that the prototype did not have the means necessary for raising and lowering the compartments which house the speakers and television set. The

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prototype was intended to demonstrate the concept of the invention to those who would be offering it for sale. The speakers and television were not electrically connected, and the control means for raising and lowering the housings for them were not present. As explained in paragraph (5), the purpose of the meeting was to solicit feed back from those familiar with the relevant market place. No prices had been established, no sales literature was prepared and no offers for sale were made either directly or indirectly at the time of the meeting. Mr. Valmassoi, as Executive Vice President and a person intimately involved with the planning and running of the meeting and was present throughout, is in a position to make these statements. As set forth in paragraph (6), Mr. Valmassoi is in a position to know the facts concerning confidentiality. In support of his recollection concerning confidentiality, Declarations of four attendees who were Master Spas sale representatives state that they recall that they signed a confidentiality agreement before entering the meeting room. Further, Mr. Valmassoi in paragraph (7) indicates that on the basis of his knowledge and recollection, the standard form of confidentiality agreement used by Master Spas was the form of agreement signed by the attendees at the June 5, 200 meeting. This document is attached to this Declaration as Exhibit B. Mr. Valmassoi further states in paragraph (7) that commercial documents and in particular price lists or quotations, advertising brochures publicity release or other documents related to the product were not made available at this meeting or even in existence at that time.

It is noted that the Declarations of the sales representatives included in Exhibit A of the Valmassoi Declaration are photocopies of Declarations identifying applicants' attorney file 25514-C USA which is Application No.

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10/671,646. The originals of those Declarations are being submitted in a response being filed in the '646 application contemporaneously with the filing of this communication and can be verified by inspection of that file. It is respectfully requested that the Examiner accept these Declarations in lieu of originals. Nevertheless, if the Examiner requests, applicants stand ready to provide freshly executed Declarations for this application.

Prompt and favorable action is respectfully solicited.

Respectfully submitted,

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Enclosures